



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/573,693

09/28/2006

Leo Bernard de Vries

294-246 PCT/US

7172

23869 7590 05/26/2010
HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

EXAMINER

XAVIER, VALENTINA

ART UNIT

PAPER NUMBER

3644

MAIL DATE

DELIVERY MODE

05/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/573,693	Applicant(s) DE VRIES ET AL.	
	Examiner VALENTINA XAVIER	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 3, 5 – 8, 11, 13 and 15 - 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Klein (US 6,892,672).

Klein discloses an apparatus for breeding fish comprising a frame-like structure (10) having as a part thereof at least four mutually spaced apart buoyancy/ballast bodies (17 – depending on the level of water in the legs), buoyancy/ballast bodies being mutually connected by connecting means (13), such that an open frame is formed by at least said connecting means (See Fig. 1), wherein at least between the buoyancy/ballast bodies a series of breeding/harvesting surfaces (10A - C) are provided (See Fig. 5), breeding surfaces extending substantially parallel to each other above each other, and a longitudinal axis disposed at an angle relative to the breeding surfaces, the longitudinal axis extending substantially vertically during use (See Fig. 5).

The breeding surfaces of Klein are formed by rows of growing elements (11) arranged substantially next to each other in receptacles.

Klein discloses paths being provided (15, 16) between the rows of growing elements located next to each other.

Klein discloses the frame being provided with supporting means (22) on which the breeding surfaces are mounted, such that the breeding surfaces are removable individually or in groups.

Klein discloses the breeding surfaces having upstanding edges.

Klein teaches that the buoyancy/ballast means is substantially cylindrical and that the apparatus is substantially self-lifting.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klein in view of Gollott et al (US 4,266,509).

With regard to claim 4:

Klein fails to teach that the breeding surfaces are substantially manufactured from plastic provided with openings, such that shellfish can rest thereon. Gollott et al discloses a method and apparatus for offshore depurating habitat for shellfish comprising a breeding surfaces being manufactured from plastic (See last line of Col. 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic in the breeding surfaces of Klein, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. See also Ballas Liquidating Co. v. Allied industries of Kansas, Inc. (DC Kans) 205 USPQ 331.

With regard to claim 9:

Gollott et al shows in Fig. 6 that the distance between the ballast means is relatively large relative to the height of the frame. Klein as modified by Gollot et al fails to show specifically that the distance between the ballast means being three or five times as much as the height of the frame. However, it would have been an obvious matter of design choice to use this distance, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

With regard to claim 10:

Gollot et al also shows that the breeding surfaces are situated relatively closely above each other but fails to show the distance being between 0.1 and 1 meter, more in particular between 0.1 and 0.5 meter and preferably between 0.25 and 0.5 meter. However, it would have been an obvious matter of design choice to use these given ranges, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klein as modified by in view of Foster et al (US 6,044,798).

With regard to claim 12:

Klein fails to show that the frame comprises of a number of subframes comprising a series of breeding surfaces. However, Foster et al teaches a floating aquaculture apparatus combining a series of units (34) used for aquaculture. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use this technique of supporting more than one unit or "sub frame" within a larger system for the predictable result of providing a larger habitat.

Response to Arguments

Applicant's arguments filed 2/24/2010 have been fully considered but they are not persuasive. Applicant argues on pages 8 – 10 that the breeding surfaces (10A – 10C) are not breeding surfaces since fish do not attach to the open structured wall of the cages. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicant further argues on pages 8 – 10 about breeding cages 11 of Klein. However, since these arguments do not correlated with Examiner's rejection (Examiner cited 10A - 10C of Klein to be breeding cages), these arguments are rendered moot.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened

Art Unit: 3644

statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VALENTINA XAVIER whose telephone number is (571)272-9853. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571)272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy D. Collins/
Primary Examiner, Art Unit 3643

Application/Control Number: 10/573,693

Page 8

Art Unit: 3644

/VX/